

IN THE HIGH COURT OF JUDICATURE OF BOMBAY**CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.180 OF 2007

WITH

CIVIL APPLICATION NO.390 OF 2007

Vithal Namdev Supanwar & Ors. ..Appellants.

V/s.

Sunita Buvaji Supanwar & Ors. ..Respondents.

Mr.G.M.Savagave for appellants.

Mr.Girish Godbole for respondent Nos. 1 to 3.

CORAM: A.M.KHANWILKAR, J**DATE : JULY 9, 2007.****P.C. :**

1. Heard counsel for the parties.

2. Having considered rival submissions and going by the findings on fact recorded by the Courts below, in particular paragraphs-11 and 12 of the impugned Judgment, no interference is warranted. No substantial question of law would arise for consideration. According to the appellants however, as the marriage with Chandrabhaga was prior to 1955; and prior to 1955 second marriage was not prohibited, the appellant would also be entitled to claim the share in the joint family property alongwith the plaintiffs who claims through Buvaji. It is not possible to countenance this submission. There is

nothing to support the stand of the appellants that second marriage was permissible. Besides, it is found that the fact that marriage of defendant No.2 with defendant No.1 had taken place prior to 1955 has not been proved. The two Courts below have concurrently found that the first marriage of defendant No.1 was solemnised with one Chandrabhaga, from which wedlock son Buvaji was born to defendant no.1 and said Chandrabhaga. The plaintiffs are claiming through Buvaji. In such a case, obviously, the second marriage will have to be held as illegal and on that basis the Courts below have proceeded to decide the matter against the appellants. No fault can be found with that approach.

3. According to the advocate for the respondents, one crucial aspect has been lost sight by the Courts below that in the area where the parties are residing, the provisions of Bombay Prevention of Bigamy Marriage Act, 1945 was in force since 1945. In view of that enactment, marriage solemnised between the defendant No.1 and defendant No.2, as is commonly accepted, was solemnised after the marriage of Chandrabhaga, will be illegal; even if it is assumed that it was prior to 1955, but after 1945.

4. Hence dismissed.

5. In view of this order, nothing survives for consideration in civil application. The same is disposed of accordingly.